



U.S. Department of Justice

Tax Division

Civil Trial Section, Eastern Region

REZ:DSM:CMCoppler
DJ 5-70-11656
CMN 2020100346

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February 10, 2020

Via FedEx

Attn: Don Salzman and Art Bookout
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York, Avenue, NW
Washington, DC 20005

Re: *Touhy Request/ Document Subpoena to IRS related to Zelaya, et al. v. Hammer, et al.*
Case No. 3:19-cv-00062 (E.D. Tenn.)

Dear Messrs. Salzman and Bookout:

This letter is in response to the subpoena dated January 6, 2020, that was served on the Internal Revenue Service ("IRS") in connection with the above-referenced case. The subpoena seeks documents related to the planning and carrying out of an April 5, 2018 IRS search warrant.

As previously explained in the letter dated December 20, 2019, the information you seek is the return information of a third-party taxpayer, as it was either collected or created by the IRS in connection with the investigation into that third-party taxpayer for offenses under the Internal Revenue Code. Such return information is protected from disclosure under 26 U.S.C. § 6103. *See* 26 U.S.C. § 6103(a), (b)(2) (providing that return information shall be confidential and defining the term "return information"). Under the IRS's *Touhy* Regulations, you were required to state the statutory authority for the disclosure of return information. 26 C.F.R. § 301.9000-5(a)(4). You failed to do so.

Despite the fact that you failed to meet all requirements under the *Touhy* Regulations, the IRS has identified a statutory authority that would permit the disclosure of the return information. *See* 26 U.S.C. § 6103(h)(4). Accordingly, the IRS has instructed me to release the following categories of documents:

1. Photos taken during the April 5, 2018 execution of the IRS search warrant;
2. Five videos;
3. The Memorandum of the Interview of the third party taxpayer referenced in the second paragraph of this letter;
4. Emails;
5. Files created and compiled in relation to the execution of the IRS search warrant.

The IRS is withholding the following categories of information for the reasons set forth below:

1. Memorandums of Interviews with employees Southeastern Provision LLC, as this information is not relevant to any claims or defenses of the parties in the above-reference *Bivens* action and is subject to the law enforcement investigatory files privilege;
2. Written communications other than e-mails withheld in full pursuant to the law enforcement investigatory files government privilege because they pertain to investigatory matter(s) other than the execution of the search warrant;
3. Law enforcement files including, but not limited to: Viability Checks, Chief Counsel Memoranda, Search Warrant Plans, Investigation Evaluations, and Reports of Investigations, as this information is not relevant to any claims or defenses of the parties in the above-referenced *Bivens* action and is subject to the law enforcement investigatory files privilege;
4. Phone numbers of special agents are being withheld pursuant to the Protective Order entered in this case at Docket Number 353;
5. Social Security numbers of the employees of Southeastern Provision, as this information is not relevant to any claims or defenses of the parties in the above-referenced *Bivens* action;
6. Southeastern Provision's Quarterly Federal Tax Returns (Form 941) and Account Transcripts, as this information is not responsive to the subpoena. (*See Decl. of Meredith B. Stewart* ¶ 15); and
7. All materials designated as grand jury as this information may not be disclosed under Fed. R. Crim. P. 6(e).

As to the emails, the IRS is withholding the following information:

1. The email addresses and phone numbers of government employees are being withheld pursuant to the Protective Order filed in the above-referenced case;¹
2. Emails (or portions of emails) that are not responsive because they either are not related to work, or are administrative such as passwords but are nonetheless included in email chains that are responsive; and
3. The name of the confidential informant as referenced in the publicly filed affidavit in support of the search warrant.

The IRS further asserts the following privileges as to redacted portions of the emails:

1. Attorney-Client Privilege;
2. Deliberative Process Privilege; and
3. Attorney Work Product Privilege.

Finally, please be aware that the IRS has identified four internal hard drives containing Southeastern Provision's own surveillance videos and photos that were seized on April 5, 2018, and are identified in more detail below:

1. 4 TB Segate hard drive containing a copy of the disk-to-disk clone of 1_X_1_Lorex DVR HDD2;
2. 10 TB Western Digital hard drive containing a copy of the disk-to-disk clone of 1_X_1_Lorex DVR HDD1;
3. 2 TB Segate hard drive containing copies of exported videos from 1_P_1_DR_Lores015455 and 1_X_1_AV Inc DVR; and
4. 10 TB Western Digital hard drive containing forensic images of all three DVRs seized and copies of the videos.

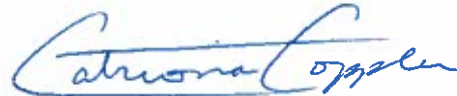
We understand copies of these internal hard drives were provided to you in response to a request for production to the defendants the United States is representing in the above-referenced *Bivens* action. The files on these internal hard drives are not saved in a format that is compatible with all computers. Accordingly, the IRS has requested that an outside vendor, convert the files, copy the files, and place them on external hard drives. Once the files are converted and copied,

¹ Pages 546- 550 (IRS PROD 01198-1202) of the emails have been marked as Confidential under the Protective Order. (Stipulated Protective Order, ECF No. 353.)

we will provide copies. We do not yet have an estimate for how long this will take, but will advise you once we know more.

If you have any questions, please call me at (202) 514-5153.

Sincerely yours,



CATRIONA M. COPPLER
Trial Attorney
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Enclosures.

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